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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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OCT 13 1998

In the Matter of

Carriage of the Transmissions  
of Digital Television Broadcast Stations

Amendments to Part 76  
of the Commission's Rules

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CS Docket No. 98-120

To: the Commission

**COMMENTS OF LEE ENTERPRISES, INCORPORATED**

Lee Enterprises, Incorporated ("Lee"), the licensee of 16 commercial broadcast stations located in eight states,<sup>1</sup> hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-referenced proceeding. Lee has a long and distinguished record as a broadcaster, with a historical emphasis on serving medium-sized communities. These comments express Lee's support for an orderly and successful transition to digital broadcasting—a process that requires regulatory safeguards to ensure cable carriage of local stations' non-subscription DTV video programming signals.

**I. The Communications Act Requires That Broadcasters' Free Digital Programming Transmissions Be Accorded Mandatory Carriage Rights**

In the Notice, the Commission seeks comment on its tentative conclusion concerning its "broad authority" to define the scope of cable operators' mandatory carriage obligations during the transition

<sup>1</sup> Lee is the licensee or controlling owner of the following television stations (excluding satellite stations): KGUN, Tucson, Arizona; KGMB, Honolulu, Hawaii; KSNW, Wichita, Kansas; KSNT, Topeka, Kansas; KMTV, Omaha, Nebraska; KRQE, Albuquerque, New Mexico; KOIN, Portland, Oregon; KMAZ, Las Cruces, New Mexico; and WSAZ-TV, Huntington, West Virginia.

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from analog to digital broadcasting. Notice at ¶ 13. Lee agrees that the FCC has some discretion to fashion its must-carry rules to address the complexities posed by the transition period. The basic carriage obligation, however, is a statutory requirement.

The Communications Act, as amended by the Cable Television Consumer Protection and Competition of 1996, mandates in plain language that each cable operator “shall carry” the “signals of local commercial television stations” on its system. 47 U.S.C. § 534(a). Congress did not alter this obligation via the Telecommunications Act of 1996 (the “1996 Act”). To the contrary, a new subsection of the same provision plainly states that the Commission “shall . . . establish any changes” to its must-carry regulation “*necessary to ensure cable carriage*” of local broadcasters’ digital signals. 47 U.S.C. § 534(b)(4)(B) (emphasis added). The Commission apparently recognizes that this statutory language requires cable operators to carry the free digital video signals of local broadcasters after the transition period ends. Notice at ¶¶ 13-14.

This mandate is no less compelling—and, indeed, may be more critical—with respect to carriage of digital signals during the transition period. Lee has consulted with the National Association of Broadcasters (“NAB”) and concurs with its detailed statutory analysis. Lee simply stresses here that the 1996 Act explicitly eliminates carriage rights for only those “ancillary or supplementary services” that a digital broadcaster might offer in addition to its more traditional video program service. Moreover, Congress obviously was aware of the Commission’s plans for the transition from analog to digital broadcasting—and enacted nothing to suggest that mandatory carriage obligations would not apply during that period. The canons of statutory construction therefore require that the Commission give meaningful effect to the plain language of the Act during the time required to fully implement

digital broadcasting.<sup>2</sup> See, e.g., *Bradley v. Austin*, 841 F.2d 1288 (6th Cir. 1988) (if the statutory language is unambiguous, that language is conclusive); *Western Airlines v. Board of Equalization*, 480 U.S. 123 (1987) (legislative history often ambiguous and consequently unreliable); *Stromberg Metal Works v. Press Mechanical*, 77 F.3d 928 (7th Cir. 1996) (when text of statute and legislative history disagree, the text controls).

## **II. Broadcasters' Free Programming Remains A Unique Service That Provides Tangible Benefits To Viewers**

The Notice also seeks comments concerning “the interests to be served by any digital broadcast signal carriage rules.” Notice at ¶ 16. In this regard, the Commission notes that the Supreme Court, in upholding the constitutionality of the mandatory carriage provisions, found that the statute served several goals—including preservation of “the benefits of free, over-the-air broadcast television” programming and “the widespread dissemination of information from a multiplicity of sources.” *Id.* at ¶ 15 (citing *Turner v. FCC*, 117 S. Ct. 1174, 1186 (1997)). These goals remain as important today as they did the few short years ago when Congress first enacted the must-carry requirements. Indeed, given the growing gap between the “information haves” and “have-nots” in our society, these goals have enhanced significance.

Lee therefore was concerned by the implications of certain statements in Chairman Kennard’s recent speech to the International Radio and Television Society. See Remarks of William E. Kennard, Chairman, Federal Communications Commission, to the International Radio and Television Society,

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<sup>2</sup> Paragraphs 8 and 12 of the Notice cite certain passages from the legislative history of the Telecommunications Act of 1996 and the Balanced Budget Act of 1997 concerning lawmakers’ reluctance—given the Commission’s pending proceeding—to codify the explicit details of digital must-carry obligations. These passages do not support the proposition that broadcasters’ free DTV signals have no mandatory carriage rights.

rel. FCC Daily Digest, Sept. 15, 1998, at 2117-2123 ("IRTS Speech"). In discussing this pending proceeding, the Chairman asked "what remains that make broadcasters unique" now that "cable operators create local programming, particularly news and public affairs shows . . . with almost three quarters of Americans actually paying to receive those channels . . . ? And is this uniqueness significantly tangible, demonstrable, and assured to justify requiring cable carriage?" IRTS Speech at 2122.

In response, Lee would note that, in fact, in many DMAs (like Albuquerque, for example) cable penetration is actually under 60 percent. In addition, much of the viewing time by cable subscribers is devoted to local stations on cable that provide local news, including critical weather warnings, not available from local cable sources.

Although over-the-air television broadcasting faces ever-increasing competition in the multichannel video marketplace, the ongoing service provided by Lee and other broadcasters certainly has not been replaced by the type of "local news cable channel" now offered by a few—mostly large-market—cable systems. In fact, to our knowledge, no such local cable news services are currently available in the markets that Lee stations serve, except where local TV stations originate news on a cable channel.

Yet even where cable operators do provide some local news, they are only one "voice" in the local community. The Commission recently has emphasized the importance of its mandate to ensure that Americans have meaningful access to a "diversity of voices" as the Communications Act commands. *See, e.g., Biennial Review—Broadcast Ownership Regulations* (Notice of Inquiry), MM Docket No. 98-35, FCC 98-37, at ¶ 4 (rel. Mar. 13, 1998) ("Promoting diversity in the number of separately owned outlets has contributed to our goal of viewpoint diversity by assuring that the programming and views available to the public are disseminated by a wide variety of speakers"); *id.*,

Separate Statement of Chairman Kennard (“retaining diversity of broadcast outlets is, in my view, vital to the democratic process”); *id.*, Separate Statement of Commissioner Susan Ness (“What’s needed are independently owned outlets.... ‘Antagonistic’ sources can only be fully antagonistic (in the best sense of the word) if they are separately owned and genuinely compete....”), *id.*, Separate Statement of Commissioner Gloria Tristani (“Diversity promotes democratic values by ensuring that people are exposed to a range of views on issues of public concern. Unlike our interest in competition, I believe that our interest in diversity can be satisfied only through a large number of separately owned competitors in a market.”).<sup>3</sup> Lee agrees that if the Commission’s diversity mandate means anything, it surely must direct the agency to preserve the availability of many competing local outlets for news and public affairs programming.

Furthermore, by the Chairman’s own estimate, at least 25 percent of viewers in the average TV market do not—or cannot afford to—subscribe to cable. Lee notes that Congress itself indicated that the existence of a smaller percentage of non-cable subscribers is sufficiently significant to warrant consideration before ending analog TV transmissions. *See* Notice at ¶ 12 (citing provision of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 11 Stat. 251, that extends deadline for return of analog channel if 15 percent of local viewers are unable to receive digital TV transmissions). In other proceedings, the Commission has demonstrated its concern for those Americans who cannot afford

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<sup>3</sup> *See also In re United Broadcasting Co., Inc.*, File No. BALH-971023EF, FCC 98-260 (rel. Oct. 6, 1998) (Concurring Statement of Chairman Kennard, Separate Statement of Commissioner Ness, and Dissenting Statement of Commissioner Tristani); Remarks of William E. Kennard, Chairman, Federal Communications Commission, to the Radio-Television News Directors Association (dated Sept. 25, 1998), FCC Daily Digest, Sept. 28, 1998, at 4164-68; Remarks of FCC Commissioner Gloria Tristani before the Hispanic National Bar Association (dated Oct. 1, 1998), FCC Daily Digest, Oct. 5, 1998, at 322-26; Remarks of Commissioner Susan Ness before the American Women in Radio and Television’s North Central Area Conference (dated June 5, 1998), FCC Daily Digest, June 9, 1998, at 1187-93.

access to advanced wireline technology. *See, e.g., Federal-State Joint Board on Universal Service*, 12 FCC Rcd. 8776 (1997), *recon.*, 12 FCC Rcd. 10095 (1997). That same underlying objective—the provision of service to those who may not be able to afford subscriber-only offerings—should prompt the FCC to take the steps needed here to ensure that free, over-the-air television broadcasting remains economically viable throughout the transition period.

### **III. The DTV Transition Process Embodies Sound Policy Choices That Should Continue To Be Supported**

Lee of course agrees with the Chairman that the public interest, rather than private ones, must be “paramount” throughout the FCC’s oversight of the DTV transition. IRTS Speech at 2121. But many of the financial and technical burdens that broadcasters now bear are directly traceable to government policy, rather than marketplace evolution. The government—at the congressional level and at the Commission—already has decided that an accelerated transition to digital television is in the public interest. Accordingly, the FCC has imposed a mandatory transition timetable that Lee and other broadcasters are working diligently, at great expense, to meet.

The financial wherewithal to achieve the government’s policy goals, however, is contingent in large part on the success that our digital signals have in reaching the audiences that advertisers seek. Without guaranteed cable carriage (especially in these early years), digital transmissions’ ability to reach those audiences will be crippled. The Chairman has said that the FCC “will remain vigilant in [its] lookout for bottlenecks” that may come between viewers and the new transmission technology. IRTS Speech at 2122. It is difficult to conceive of a more onerous bottleneck than a lack of cable carriage or carriage that materially degrades the quality of the broadcaster’s digital signal for up to 75 percent of the viewing homes.

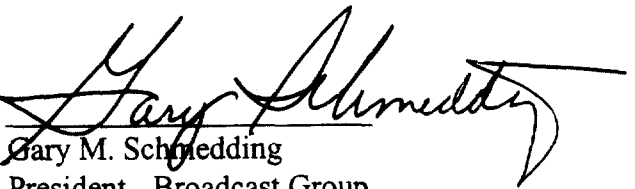
Such a bottleneck also would have obvious implications for the eventual return of broadcasters' second channels. As noted above, Congress has determined that analog broadcasting should continue until 85 percent of the local viewing audience is able—by some means—to receive digital TV signals. Cable carriage will be key to that penetration and, therefore, key to ending the transition period.

In speaking about the potential of DTV generally, Chairman Kennard has expressed the Commission's interest in "trusting in the marketplace" and keeping government intervention to a minimum. IRTS Speech at 2122. Lee concurs with the principle stated by the Chairman but urges the FCC to recognize that marketplace forces alone cannot ensure that the policy-driven DTV transition schedule will succeed as lawmakers, regulators, and broadcasters desire.

For the foregoing reasons, Lee urges the Commission to adopt reasonable and realistic DTV must-carry safeguards so that the agency's long-planned transition from analog to digital broadcasting ends in the successful, widespread availability of the new technology to all U.S. television viewers.

Respectfully submitted,

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October 13, 1998